

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 912 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

GANGASINH CHIMANSINH RAJPUT

Versus

SUKHAKUNVAR GANGASINH RAJPUT

Appearance:

MS KUSUM M SHAH for Petitioner

UNSERVED for Respondent No. 1

Mr M A Bukhari, APP for Respondent No. 2

CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 07/04/97

ORAL JUDGEMENT

On an application filed by Sukhakunvar Gangasinh Rajput, wife of the petitioner, the second Joint Civil Judge, Palanpur ordered to pay an amount of maintenance at the rate of Rs.400/- per month to her and Rs.200.- to her minor son by order dated 20.6.1989. The petitioner

preferred Revision Application against the said order before the Court of Additional Sessions Judge, Banaskantha. It was contended that no summons was served on him and the learned Magistrate has committed error in passing an ex-parte order against him. It was found that the petitioner refused to accept the notice and there is an endorsement to that effect on the summons. The attention of the learned Judge was invited to the provisions of section 68 of the Criminal Procedure Code which requires that the officer who has served the summons to file affidavit with respect to the correctness of the endorsement made on the summons. This contention was rejected by the learned Judge saying that the endorsement indicate that the summons were tendered to Gangasingh Rajput in presence of a creditable person Prabhura. He has also put his thumb impression on the summons.

2. Having considered the contentions of the learned Advocate, in my view, the learned Addl. Sessions Judge has committed error in considering the provisions of section 68 of Cr.P.C. Section 68 provides that when a summons issued by a Court is served outside its local jurisdiction and in any case where the officer who has served a summons is not present at the hearing of the case, an affidavit, purporting to be made before a Magistrate, that such summons has been served, and a duplicate of the summons purporting to be endorsed by the person to whom it was delivered or tendered or with whom it was left, shall be admissible in evidence, and the statements made therein shall be deemed to be correct unless and until the contrary is proved. Sub-section (2) provides that the affidavit mentioned in this section may be attached to the duplicate of the summons and returned to the Court. It appears that no affidavit of the person serving summons was filed. In view of this, it cannot be said that the summons was served on the petitioner Gangasingh Rajput. Thus, the order of the learned Magistrate awarding maintenance has been passed without hearing the petitioner and as the same is illegal and void.

3. It is stated by the learned Advocate for the petitioner that perhaps the parties have compromised, but she is not sure about the same.

4. In view of the aforesaid, this Special Criminal Application is allowed and the order dated 20.6.1989 passed by the second Joint Judicial Magistrate First Class, Palanpur and the order of the learned

Addl.Sessions Judge, Banaskantha dated 2.4.1991 are quashed and set aside. The first court namely; second Joint JMFC, Palanpur is directed to hear the parties and decide the matter afresh. The petitioner-Gangasingh C Rajput shall appear before the said Court on 18.6.1997. In case the petitioner does not appear on the said date, this order of quashing both the orders shall stand vacated and this Special Criminal Application shall stand rejected.

Rule made absolute to the aforesaid extent.

....